

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

August Byron Kreis, III,)	
)	
Petitioner,)	
)	C/A No.: 0:18-cv-0750-TLW
v.)	
)	
Scott Lewis, Warden, Perry Correctional)	
Institution; B. Stirling, Director, South Carolina)	ORDER
Department of Corrections,)	
)	
Respondent.)	
_____)	

Petitioner August Byron Kreis, III, proceeding *pro se*, filed this petition pursuant to 28 U.S.C. § 2254. ECF No. 1. This matter now comes before this Court for review of the Report and Recommendation (the Report) filed on March 30, 2018, by United States Magistrate Judge Paige J. Gossett, to whom this case was previously assigned pursuant to 28 U.S.C. § 636(b) and Local Civ. Rule 73.02(B)(2)(c), (D.S.C.). In the Report, the Magistrate Judge recommends that the petition be summarily dismissed without prejudice and without requiring Respondent to file a return. ECF No. 6. Petitioner filed Objections to the Report on April 9, 2018. ECF No. 8. This matter is now ripe for disposition.

The Court is charged with conducting a *de novo* review of any portion of the Magistrate Judge's Report and Recommendation to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636. In conducting its review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those

portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in *Wallace*, the Court has reviewed, *de novo*, the Report, the applicable law, and the Objections. As noted in the Report, Petitioner has filed an application for post-conviction relief in Lexington County, and his state court application is still pending. ECF No. 6 at 3. The Court accepts the Magistrate Judge's careful factual and legal analysis, which concludes that Petitioner has not exhausted his administrative remedies. *Id.* Therefore, after careful consideration, **IT IS ORDERED** that the Report, ECF No. 6, is **ACCEPTED**, and the Petitioner's Objections, ECF No. 8, are **OVERRULED**. The Petition, ECF No. 1, is **DISMISSED** without prejudice and without requiring Respondent to file a return.

The Court has reviewed this Petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The Court concludes that it is not appropriate to issue a certificate of appealability as to the issues raised herein. Petitioner is advised that he may seek a certificate from the Fourth Circuit Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

s/Terry L. Wooten
Chief United States District Judge

August 6, 2018
Columbia, South Carolina